

AO 120 (Rev. 3/04)

<b>TO:</b> <b>Mail Stop 8</b> <b>Director of the U.S. Patent and Trademark Office</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been  
 filed in the U.S. District Court NCWD on the following ☐ Patents or ☒ Trademarks:

DOCKET NO. 3:08cv391	DATE FILED 8/22/2008	U.S. DISTRICT COURT NCWD
PLAINTIFF Salsarita's, Inc.		DEFENDANT SGH Management, Inc. et al
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 2466514		***See attached complaint***
2 2472250		
3 3,009,919		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
2			
3			
4			
5			

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK <i>Frank S. Johns</i>	(BY) DEPUTY CLERK <i>Theresa Spri</i>	DATE 8/22/08
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director  
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
CASE NO. 08-cv-\_\_\_\_\_

SALSARITA'S, INC.,

*Plaintiff,*

vs.

SGH MANAGEMENT, INC., STUART  
HEATHERINGTON, and GINA  
HEATHERINGTON,

*Defendants.*

**VERIFIED COMPLAINT**

Plaintiff Salsarita's, Inc. ("Salsarita's"), by and through its undersigned counsel, complains of Defendants SGH Management, Inc. ("SGH"), Stuart Heatherington, and Gina Heatherington as follows:

**PARTIES, JURISDICTION & VENUE**

1. Salsarita's is a corporation organized and existing under the laws of the State of North Carolina with its principal place of business in Charlotte, North Carolina.
2. SGH is a corporation organized and existing under the laws of the State of North Carolina with its principal place of business in Raleigh, North Carolina.
3. Upon information and belief, Stuart Heatherington is the President and Secretary of SGH and is a citizen and resident of Wake County, North Carolina.
4. Upon information and belief, Gina Heatherington is the Registered Agent of SGH in North Carolina and is a citizen and resident of Wake County, North Carolina.
5. Upon information and belief, SGH is wholly owned and operated by Stuart Heatherington and Gina Heatherington.

6. This action arises under the Lanham Act of the United States, 15 U.S.C. § 1051 *et. seq.*, Chapters 66 and 75 of the North Carolina General Statutes, and the common law of the State of North Carolina as a result of SGH's infringement of Salsarita's' trademarks and service marks, misappropriation of trade secrets, unfair and deceptive trade practices, libel, slander, and other misconduct of SGH, Stuart Heatherington, and Gina Heatherington.

7. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121, 28 U.S.C. §§ 1331, 1338, and 1367, and the doctrines of pendent and ancillary jurisdiction.

8. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c).

#### **GENERAL FACTUAL ALLEGATIONS**

9. Salsarita's offers and sells franchises for Salsarita's® restaurants, which specialize in quick-serve Mexican food, including burritos, soft tacos, quesadillas, salads, nachos, and other items approved by the franchisor.

10. Salsarita's is the owner of the name "Salsarita's," and of various trademarks and service marks (the "Salsarita's Marks").

11. The following Salsarita's Marks are registered with the United States Patent and Trademark Office:

<b>Service Mark</b>	<b>Registration No.</b>	<b>Registration Date</b>
SALSARITA'S	2466514	July 3, 2001
SALSARITA'S	2472250	July 24, 2001
SALSARITA'S FRESH CANTINA	3009919	November 1, 2005

12. Salsarita's' proprietary names, logos, and marks remain in full force and effect. Salsarita's has given public notice of the registration of these Salsarita's Marks as provided in 15 U.S.C. § 1111.

13. Salsarita's has invested substantial sums in advertising and promoting the Salsarita's name, logo, and marks.

14. As a result, the Salsarita's name, logo, and marks have become famous and are strongly associated in the minds of the consuming public with the products and services offered by Salsarita's and its franchised chain of restaurants.

15. The Salsarita's name, logo, and marks have acquired secondary meaning, enjoy an excellent reputation among the consuming public, and constitute property of the greatest value to Salsarita's.

16. Salsarita's offers and sells franchisees the right to operate restaurants under the Salsarita's Marks and other marks and logos designated for use in connection with the operation of Salsarita's® restaurants.

17. Salsarita's offers and sells franchisees the right to operate restaurants under a prescribed system that includes a distinctive layout and design, signage, specifications, and appearance; specific and uniform operating procedures, menus, recipes, and formulas; and proprietary methods and techniques for inventory and cost controls, recordkeeping and reporting, personnel management and training, purchasing, marketing, sales promotion, and advertising, set out in a confidential and proprietary Operations Manual (the "Salsarita's Methods").

## THE FRANCHISE AGREEMENT AND GUARANTY

18. On or about March 31, 2003, Salsarita's and SGH executed a Franchise Agreement (the "Franchise Agreement") that granted SGH a license to use the Salsarita's Marks and the Salsarita's Methods in connection with the operation of a Salsarita's® restaurant located at 8521 Brier Creek Parkway, Raleigh, North Carolina, 27617 (the "Restaurant"). A copy of the Franchise Agreement is attached hereto as **Exhibit A**.

19. Concurrent with the execution of the Franchise Agreement, Gina Heatherington executed a Guaranty of Franchise Owner's Undertakings, which guaranteed SGH's performance under the Agreement (the "Guaranty"). A copy of the Original Guaranty is included in the Franchise Agreement.

20. The Franchise Agreement requires SGH to remit to Salsarita's by the 15<sup>th</sup> of each month a royalty fee of five percent (5%) of monthly gross revenues for the Restaurant. (Ex. A, Section VIII(B).)

21. The Franchise Agreement requires SGH to provide to Salsarita's by the 15<sup>th</sup> of each month financial statements, including income and balance sheets, for the previous month. (Ex. A, Section X(B).)

22. The Franchise Agreement requires SGH to contribute monthly to a national advertising fund in an amount equal to one percent (1%) of its monthly gross revenues. (Ex. A, Section IX(D).)

23. The Franchise Agreement permits Salsarita's to terminate SGH immediately upon providing it with notice, and without an opportunity to cure, if SGH breaches the agreement in certain, specified ways, including:

- a. If, on two or more occasions during any twelve-month period, SGH fails or refuses to submit when due any financial statements or required reports or fails or refuses to pay when due its royalty fees or any other payments required under the agreement. (Ex. A, Section XVI(C)(2).)
- b. If SGH “[e]ngages in any activity which has a material adverse effect” on Salsarita’s or on the Salsarita’s Marks. (Ex. A, Section XVI(C)(8).)

**DEFAMATION AND HARASSMENT  
BY SGH AND STUART HEATHERINGTON**

24. Beginning in or about March 2008, SGH’s President, Stuart Heatherington, began waging a campaign to threaten and harass Salsarita’s, its current and former franchisees and employees, and even family members of those employees, and to make false and defamatory statements about Salsarita’s and its executives.

25. When Heatherington began this campaign of threats, harassment, and defamatory statements, he was aware that a venture capital company was contemplating an investment in Salsarita’s.

26. Upon information and belief, Heatherington made these false, defamatory, and harassing statements to Salsarita’s franchisees, current and former employees, and others as part of an effort to prevent the venture capital company’s investment in the franchise system.

27. SGH, through Heatherington, sent a series of e-mails to Salsarita’s franchisees, Salsarita’s employees, and others outside the Salsarita’s system, making malicious, threatening, false, and defamatory statements about the company and its executives. By way of example:

- a. In an email dated March 15, 2008, Heatherington wrote, “The company we are in bed with, for which I can’t figure out if I’m on my back or on my stomach for, is screwing us.” He wrote that a Salsarita’s® store owned by then-current Salsarita’s CEO Bruce Willette was a “ROACH MOTEL” and was “teaming [sic] with roaches.”
- b. In that email dated March 15, 2008, Heatherington threatened: “Let me tell you something Bruce this isn’t the Wizard of Oz and you sure aren’t pulling all the levers, brother. You’re more like a poor man’s scarecrow. Last I heard scarecrows get burned when they play with fire. And let me tell you, I’m the almighty flaming torch right now.”
- c. In a voice message left at Salsarita’s on March 18, 2008, referring to his email messages, Heatherington said: “How do you like that truth, baby? You like that truth, baby? Called to wish you a Merry Christmas. The next one is going to be a work of art. I promise you. You should stay tuned, baby. Stay tuned, baby.”
- d. In an email dated March 21, 2008, Heatherington wrote that in the past three months, 14 Salsarita’s stores had closed, and “[t]here are at least 8 more stores going in the hole every month where I’ve talked to the owners. I’m sure there are more.”
- e. In another email dated March 21, 2008, Heatherington accused Salsarita’s of “doctoring numbers to deceive” franchisees and again stated that “14 stores in the first quarter of this year alone have closed.”

- f. In an email dated March 24, Heatherington wrote, "The stuff I already have will open up cans of nightmares in regards to fraud, doctoring corp. numbers with personal numbers, embezzlement, racketeering, the list goes on and on."
- g. In telephone calls made during March and April 2008, Heatherington, upon information and belief, asked franchisees and employees of Salsarita's if they were aware that "illegal issues are going on," and that \$30 million had been lost.
- h. In an email dated March 25, 2008, Heatherington stated that Salsarita's then-current CEO Bruce Willette was "a liar and a thief" and that Willette was "taking catering out of all the Charlotte Market and running it through his stores."

28. Heatherington, in an email dated March 24, 2008, stated his intention and plan to "shut down" any purchase of Salsarita's, adding: "there isn't going to be a purchase of this company."

29. Upon information and belief, Heatherington expressed to current and former franchisees, among others, his intention to do whatever was necessary to block any venture capital investment in Salsarita's so that he could force the company into bankruptcy and turn the franchise into a "co-op."

30. Franchisees referred to in the group e-mails sent by Heatherington complained to Salsarita's that these communications made false and misleading statements about the financial condition and performance of their franchiscs.

## SGH'S BREACHES OF THE FRANCHISE AGREEMENT AND TERMINATION

31. For the months of March through July 2008, SGH failed or refused to pay when due its royalty fees when they were due, as required under Section VIII(B) of the Franchise Agreement.

32. For the months of March through July 2008, SGH failed or refused to remit when due its advertising fund contribution, as required under Section IX(D) of the Franchise Agreement.

33. For the months of March through July 2008, SGH failed or refused to provide to Salsarita's its monthly financial statements and reports, as required under Section X(B) of the Franchise Agreement.

34. Furthermore, Stuart Heatherington, as President of SGH, boasted to other Salsarita's franchisees about SGH's refusal to meet its payment and reporting obligations under the Franchise Agreement.

35. As of August 15, 2008, SGH owes Salsarita's \$18,925.61 in outstanding royalty fees, advertising contributions, and late fees. An itemization of the sums owed by SGH is attached hereto as **Exhibit B**.

36. On July 1, 2008, SGH, through its counsel, sent a letter to Salsarita's purporting to terminate the Franchise Agreement "effective the 24<sup>th</sup> day of June 2008."

37. Despite this representation, SGH continued to operate the Restaurant as Salsarita's, and has continued to do so through the date of the filing of this Complaint.

38. Salsarita's current Chief Executive Officer, Paul Mangiamele, extended an offer to SGH and Heatherington to make a fresh start, work out a plan for repayment of SGH's past due obligations, and attempt to mend fences. Heatherington rejected that

offer, however, and indicated that he and SGH had no interest in salvaging their relationship with Salsarita's.

39. On August 13, 2008, Salsarita's, through its counsel, notified SGH and its guarantor, Gina Heatherington, that Salsarita's was terminating the Franchise Agreement due to SGH's failure to pay royalty fees and advertising contributions, its failure to submit required financial reports, and its campaign of threats, harassment, and false and defamatory statements (the "Termination Notice"). A copy of the Termination Notice is attached hereto as **Exhibit C**.

40. The Termination Notice demanded that SGH make full payment of the amounts owed to Salsarita's and comply with its post-termination obligations under the Franchise Agreement.

41. The Termination Notice also gave notice to SGH that Salsarita's intends to exercise its right under the Franchise Agreement to assume SGH's lease agreement with its lessor and to acquire SGH's interest in the assets of the Restaurant.

#### **SGH'S POST-TERMINATION OBLIGATIONS**

42. The Franchise Agreement requires SGH, upon termination or expiration of the agreement, to "pay to [Salsarita's], within fifteen (15) days after the effective date of termination or expiration of this Agreement, any Royalty Fees, advertising fees, payments for inventory, equipment or merchandise, or any other sums owed to [Salsarita's] ... which are then unpaid." (Ex. A, Section XVII(A).)

43. The Franchise Agreement requires that, upon termination or expiration, SGH "shall immediately and permanently cease to use, by advertising, or any manner whatsoever, any confidential methods, procedures, and techniques associated with

[Salsarita's] and the Proprietary Marks and any proprietary marks and distinctive forms, slogans, symbols, computer formats, signs, logos or devices associated with the [Salsarita's operating procedures and methods]. In particular, [SGH] will cease to use, without limitation, all signs, advertising materials, stationery, forms, and any other articles which display the Proprietary Marks.” (Ex. A, Section XVII(D).)

44. The Franchise Agreement requires that, upon termination or expiration, SGH will “immediately cease to operate the Salsarita's Restaurant under this Agreement, and shall not thereafter, directly or indirectly, represent itself to the public or hold itself out as a present or former Franchise Owner of [Salsarita's].” (Ex. A, Section XVII(E).)

45. The Franchise Agreement requires that, upon termination or expiration, SGH “will immediately return to [Salsarita's] all originals and copies” of Salsarita's confidential Operations Manual for the restaurant, “training aids and any other materials which have been loaned or provided to [SGH] by [Salsarita's].” (Ex. A, Section XVII(B).)

46. The Franchise Agreement also requires that, upon termination or expiration, SGH must turn over to Salsarita's “any other manuals, customer lists, rolodexes, records, files, instructions, correspondence and brochures, computer software, computer diskettes, and any and all other Confidential Information and Trade Secrets relating to the operation of the Salsarita's Restaurant in [SGH's] possession, custody, or control and all copies thereof.” (Ex. A, Section XVII(B).)

47. The Franchise Agreement requires that, upon termination or expiration, SGH “will take such action that may be required to cancel all assumed names or equivalent registrations relating to [SGH's] use of any Names or Marks and to notify the

telephone Franchisor and listing agencies of the termination or expiration of [SGH's] right to use any telephone number in any classified ad and any other telephone directory listings associated with the Proprietary Marks or with the Salsarita's Restaurant and to authorize transfer of same to [Salsarita's]." (Ex. A, Section XVII(C).)

48. The Franchise Agreement provides that, upon termination or expiration, Salsarita's "shall have the right . . . to acquire [SGH's] interest in any or all of the assets of the Franchised Business as [Salsarita's] in its sole discretion may determine, including all signs, fixtures, equipment, leasehold improvements, real property, covenants and other contract rights, inventory, products, ingredients, supplies, paper goods, and all items bearing [Salsarita's] Proprietary Marks." (Ex. A, Section XVII(K).)

49. In addition to the post-termination obligations and rights set forth above, the Franchise Agreement provides that for a period of two years after expiration or termination, SGH shall not, "regardless of the reason for such termination or expiration, either directly or indirectly, including but not limited to through any member of his, her or their immediate families (whether natural or adopted), for himself, or on behalf of, or in conjunction with any person, persons, partnership, or corporation own, manage, operate, maintain, advise, consult with, invest in be employed by, or engage in, any retail business specializing, in whole or in part, in a Competitive Business offering to the public products and/or services which are substantially similar to the products and/or services then offered by Salsarita's Restaurants . . . from the Franchised Location or within . . . a two-mile radius of any other Salsarita's Restaurant." (Ex. A, Section XIX(C).)

50. This covenant not to compete is reasonably necessary to allow Salsarita's the opportunity to re-establish its presence in the particular market served by the

Restaurant location, to re-capture the goodwill lost by Defendants' ceasing to operate as an authorized Salsarita's® restaurant, and to protect other Salsarita's franchisees from unfair competition by Defendants.

51. In the Termination Notice, Salsarita's informed SGH of its intention to enforce this covenant.

**SGH'S CONTINUING OPERATION OF THE RESTAURANT UNDER THE  
SALSARITA'S MARKS WITHOUT LICENSE OR AUTHORITY AND OTHER  
VIOLATIONS OF ITS POST-TERMINATION OBLIGATIONS**

52. Despite SGH's purported termination of the Franchise Agreement effective June 24, 2008, and despite Salsarita's actual termination of the Franchise Agreement effective with the August 13, 2008 Termination Notice, SGH has knowingly and willfully continued to operate the Restaurant using the proprietary Salsarita's Methods and Salsarita's Marks and to hold itself out to the consuming public as a Salsarita's franchisee, in violation of Sections XVII(C), XVII(D), XVII(E), and XIX(C) of the Franchise Agreement.

53. SGH has also failed and refused to pay all amounts owed to Salsarita's, in violation of Section XVII(A) of the Franchise Agreement. SGH's continuing uses of the Salsarita's Marks and its efforts to hold itself out to the consuming public as a Salsarita's Franchise are set out in the Declaration of Gregory Upper, attached hereto as **Exhibit D**.

54. Gina Heatherington, as guarantor for SGH, has failed and refused to satisfy SGH's obligations to ensure that SGH complies with its post-termination obligations and, if necessary, satisfy those obligations.

55. SGH has failed and refused to surrender to Salsarita's its confidential Operations Manual of and other materials relating to the Restaurant, in violation of Section XVII(B) of the Franchise Agreement.

56. SGH has knowingly and willfully continued to use the Salsarita's Marks and the Salsarita's Methods in violation of Paragraph XVII(D) of the Franchise Agreement.

57. SGH has knowingly and willfully violated its covenant not to compete in Section XIX(C) of the Franchise Agreement by its continued operation of the Restaurant as set forth above.

#### **ATTORNEYS' FEES NOTICE**

58. SGH and Gina Heatherington are hereby given notice pursuant to N.C. Gen. Stat. § 6-21.2 that the provisions of the Franchise Agreement and the Guaranty relative to the payment of attorneys' fees in addition to the outstanding balance sought by Salsarita's shall be enforced. Pursuant to that statute, SGH and Gina Heatherington may pay the outstanding balance due within five (5) days of receipt of this Complaint and notice without incurring liability under this statute for payment of attorneys' fees.

#### **COUNT I (Breach of Contract Against SGH)**

59. Salsarita's realleges all preceding paragraphs of this Complaint and incorporates them herein.

60. SGH has breached the Franchise Agreement in at least the following respects:

- a. Failing or refusing to pay monthly royalty fees;
- b. Failing or refusing to remit monthly advertising contributions;

- c. Failing or refusing to submit monthly financial statements and reports;
- d. Continuing to use the Salsarita's Marks and the Salsarita's Methods after termination of the Franchise Agreement;
- e. Continuing to operate the Restaurant as a Salsarita's® restaurant after the termination of the Franchise Agreement;
- f. Failing or refusing to return to Salsarita's its confidential Operations Manual and other proprietary materials relating to the Salsarita's Methods;
- g. Violating its covenant not to compete; and
- h. Taking actions, through the campaign of defamation and harassment of SGH President Stuart Hcatherington, that have a material adverse effect on Salsarita's and the Salsarita's Marks.

61. As a direct and proximate result of SGH's breaches of the Franchise Agreement, Salsarita's has suffered actual damages in an amount to be proven at trial.

62. In addition, Salsarita's has been substantially and irreparably injured by SGH's failure to comply with the post-termination obligations of the Franchise Agreement, has no adequate remedy at law, and will continue to be substantially and irreparably injured unless SGH is enjoined from continuing to use the Salsarita's Marks and Methods and to operate in violation of its covenant not to compete.

**COUNT II**  
**(Federal Service Mark Infringement Against All Defendants)**

63. Salsarita's realleges all preceding paragraphs of this Complaint and incorporates them herein.

64. SGH's continued use of the Salsarita's Marks in connection with the operation of the Restaurant after termination of the Franchise Agreement is without right,

license, or authorization. SGH has been put on notice of its obligation to immediately cease its unauthorized use of the Salsarita's Marks, but nonetheless has continued to use the Salsarita's Marks and to hold itself out to the consuming public as a Salsarita's® restaurant.

65. SGH's use of the Salsarita's Marks constitutes infringement under Section 32 of the Lanham Act, 15 U.S.C. § 1114.

66. Stuart Heatherington and Gina Heatherington, as owners, officers and/or agents of SGH, knowingly and willfully directed or participated in the acts of infringement by SGH.

67. The public is likely to be confused, deceived or otherwise misled by SGH's infringement of the Salsarita's Marks.

68. As a direct and proximate result of Defendants' infringement, Salsarita's has suffered actual damages in an amount to be proven at trial.

69. Salsarita's has been substantially and irreparably injured by Defendants' infringement of the Salsarita's Marks, and will continue to be substantially and irreparably injured until Defendants are preliminarily and permanently enjoined from infringing the Salsarita's Marks.

**COUNT III**  
**(Federal Unfair Competition Against All Defendants)**

70. Salsarita's realleges all preceding paragraphs of this Complaint and incorporates them herein.

71. SGH's unauthorized use of the Salsarita's Marks in connection with the operation of the Restaurant after the termination of the Franchise Agreement constitutes a false designation of origin and a false representation that the Restaurant is still sponsored

by, approved by, or otherwise associated with Salsarita's. SGH has been given express notice of its obligation to cease its unauthorized use of the Salsarita's Marks and the Salsarita's Methods, but nonetheless has continued to use them.

72. The public is likely to be confused, deceived or otherwise misled by SGH's unauthorized use of the Salsarita's Marks.

73. SGH's conduct constitutes unfair competition under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

74. Stuart Heatherington and Gina Heatherington, as owners, officers and/or agents of SGH, knowingly and willfully directed or participated in the acts of unfair competition by SGH.

75. As a direct and proximate result of Defendants' acts of unfair competition, Salsarita's has suffered actual damages in an amount to be proven at trial.

76. Salsarita's has been substantially and irreparably injured by Defendants' acts of unfair competition, and will continue to be substantially and irreparably injured until Defendants are preliminarily and permanently enjoined from engaging in these acts.

**COUNT IV  
(Breach of Guaranty Against Gina Heatherington)**

77. Salsarita's realleges all preceding paragraphs of this Complaint and incorporates them herein.

78. SGH has failed to pay royalties, advertising contributions, and late fees due to Salsarita's and has failed to comply with its post-termination obligations under the Franchise Agreement.

79. Gina Heatherington agreed in the Guaranty to be bound personally by all of the covenants in the Franchise Agreement, and to be personally responsible for any amounts owed to Salsarita's by SGH.

80. Gina Heatherington has failed to require SGH to comply with its post-termination obligations and pay the sums owed by SGH to Salsarita's.

81. As a direct and proximate result of Gina Heatherington's breach of the Guaranty, Salsarita's has suffered actual damages in an amount to be proven at trial.

**COUNT V**  
**(Libel Against SGH and Stuart Heatherington)**

82. Salsarita's realleges all preceding paragraphs of this Complaint and incorporates them herein.

83. In March and April 2008, Heatherington, as President of SGH, sent a series of e-mails to Salsarita's franchisees, Salsarita's employees, and others outside the franchise system, making malicious, false, and defamatory statements about the company and its employees. By way of example, Heatherington published statements that:

- a. "The company we are in bed with, for which I can't figure out if I'm on my back or on my stomach for, is screwing us."
- b. A Salsarita's® store owned by then-current Salsarita's CEO Bruce Willette was a "ROACH MOTEL" and was "teaming [sic] with roaches."
- c. In the three months prior to March 21, 2008, 14 Salsarita's stores had closed, and "[t]here are at least 8 more stores going in the hole every month where I've talked to the owners. I'm sure there are more."
- d. Salsarita's had been "doctoring numbers to deceive" franchisees, and "14 stores in the first quarter of this year alone have closed."

- e. "The stuff I already have will open up cans of nightmares in regards to fraud, doctoring corp. numbers with personal numbers, embezzlement, racketeering, the list goes on and on."
- f. Salsarita's then-current CEO Bruce Willette was "a liar and a thief" and was "taking catering out of all the Charlotte Market and running it through his stores."

84. The published statements set forth above tend to impeach Salsarita's and its executives in their trade or profession, or otherwise to subject them to ridicule, contempt or disgrace, and thus, they constitute libel per se.

85. SGH, through Heatherington, published the statements set forth above negligently or with knowledge of their falsity or reckless disregard of their truth or falsity.

86. The published statements set forth above proximately resulted in damage to Salsarita's reputation with its franchisees and with others outside the Salsarita's system and hurt Salsarita's ability to attract investors and prospective Franchisees to the system, thus causing Salsarita's pecuniary harm.

87. Salsarita's is entitled to recover compensatory damages and punitive damages from Stuart Heatherington and SGH as a remedy for these false and defamatory statements.

**COUNT VI**  
**(Slander Against SGH and Stuart Heatherington)**

88. Salsarita's realleges all preceding paragraphs of this Complaint and incorporates them herein.

89. During March and April 2008, Heatherington made telephone calls to, upon information and belief, more than half of the franchisees and employees of Salsarita's, asking them if they were aware that "illegal issues are going on," and that \$30 million had been lost.

90. The statements set forth above tend to impeach Salsarita's and its executives in their trade or profession or charge them with a crime or offense involving moral turpitude, and thus, they constitute slander per se.

91. SGH, through Heatherington, made the statements set forth above negligently or with knowledge of their falsity or reckless disregard of their truth or falsity.

92. The published statements set forth above proximately resulted in damage to Salsarita's reputation with its franchisees and with others outside the Salsarita's system and hurt Salsarita's ability to attract investors and prospective franchisees to the system, thus causing Salsarita's pecuniary harm.

93. Salsarita's is entitled to recover compensatory damages and punitive damages from Stuart Heatherington and SGH as a remedy for these false and defamatory statements.

**COUNT VII**  
**(Violation of N.C. Gen. Stat. § 75-1.1 Against All Defendants)**

94. Salsarita's realleges all preceding paragraphs of this Complaint and incorporates them herein.

95. The following actions by Defendants constitute unfair and deceptive acts or practices:

- a. Continuing to operate the Restaurant using the Salsarita's Marks and the Salsarita's Methods after termination of the Franchise Agreement;
- b. Holding SGH out to the consuming public as a licensee of Salsarita's after the termination of the Franchise Agreement;
- c. Failing and refusing to surrender to Salsarita's its confidential and proprietary materials after the termination of the Franchise Agreement;
- d. Misrepresenting the financial status of Salsarita's and its franchisees in an effort to block a proposed transaction between Salsarita's and a venture capital company and attempt to bankrupt Salsarita's and turn it into a "co-op."; and
- e. Making false and defamatory statements about Salsarita's and its executives that constitute libel per se and slander per se.

96. These actions were in or affecting commerce.

97. As a direct and proximate result of these unfair and deceptive acts, Salsarita's has suffered actual damages in an amount to be proven at trial.

98. Salsarita's is entitled to treble damages pursuant to N.C. Gen. Stat. § 75-16.

99. Because such actions were willful, Salsarita's is entitled to its attorneys fees pursuant to N.C. Gen. Stat. § 75-16.1.

**COUNT VIII**  
**(Misappropriation of Trade Secrets against all Defendants)**

100. Salsarita's realleges all preceding paragraphs of this Complaint and incorporates them herein.

101. Pursuant to the Franchise Agreement, Salsarita's provided SGH with a confidential Operations Manual, training aids, and other confidential and proprietary information relating to the operation of a Salsarita's® restaurant.

102. These items constitute trade secrets within the meaning of N.C. Gen. Stat. § 66-152, are not generally known, and are the subject of reasonable efforts by Salsarita's to maintain their secrecy.

103. By refusing to return these items after termination of the Franchise Agreement, as required by Section XVII(B) of the agreement, SGH misappropriated these trade secrets without the consent of Salsarita's.

104. Stuart Heatherington and Gina Heatherington, as owners, officers and/or agents of SGH, knowingly and willfully directed or participated in the misappropriation of trade secrets by SGH.

105. As a direct and proximate result of Defendants' misappropriation of Salsarita's' trade secrets, Salsarita's is entitled to recover damages in an amount to be proven at trial as measured by its economic loss or the defendants' unjust enrichment.

106. Salsarita's has been substantially and irreparably injured by the defendants' misappropriation of trade secrets, has no adequate remedy at law, and will *continuc* to be substantially and irreparably injured unless Defendants are preliminarily and permanently enjoined from further use of Salsarita's trade secrets.

**COUNT IX**  
**(Punitive Damages Against All Defendants)**

107. Salsarita's realleges all preceding paragraphs of this Complaint and incorporates them herein.

108. The conduct of Defendants described above was carried out with the express intent to harm Salsarita's and was done willfully, intentionally, and with malice.

109. As a result, Salsarita's is entitled to recover punitive damages of Defendants, in an amount to be determined at trial.

#### **VERIFICATION**

The Declaration of Paul Mangiamale, CEO of Salsarita's, Inc., submitted in support and verification of the Complaint and Motion for a Preliminary and Permanent Injunction, is attached hereto as **Exhibit E**.

#### **PRAYER FOR RELIEF**

WHEREFORE, Salsarita's prays as follows:

- a. That it have and recover damages of the defendants in an amount to be determined at trial, including interest on all amounts owed;
- b. That it have and recover the costs of this action and its attorneys' fees from the defendants;
- c. That it have and recover punitive damages against the defendants pursuant to N.C. Gen. Stat. § 1D-15;
- d. That a preliminary and permanent injunction be entered enjoining the defendants from:
  - i. Directly or indirectly owning, managing, operating, maintaining, advising, consulting with, investing in, being employed by, or engaging in any retail business specializing, in whole or in part, a competitive business offering to the public products and/or services which are

substantially similar to the products and/or services offered by Salsarita's, whether at 8521 Brier Creek Parkway, Raleigh, North Carolina, 27617, or within a two-mile radius of any other Salsarita's restaurant in existence as of August 14, 2008, for a period of two years from the date they begin compliance with the covenant not to compete in Section XIX(C) of the Franchise Agreement;

- ii. Operating the Restaurant as a Salsarita's® restaurant, using the Salsarita's Marks or the Salsarita's Methods;
- iii. Making any representation or statement that Defendants or the Restaurant are in any way approved, endorsed, or licensed by Salsarita's, or are identified with Salsarita's in any way;
- iv. Using and refusing to return to Salsarita's all originals and copies of Salsarita's confidential manuals, training aids, customer lists, rolodexes, records, files, instructions, correspondence, brochures, computer software, computer diskettes and any other materials that have been loaned or provided to Defendants by Salsarita's; and
- v. Using any Salsarita's trade or service marks, including those marks displayed on such items as slogans, symbols, computer formats, signs, logos, advertising, stationery, and forms.

- e. That SGH and Gina Heatherington be required to comply with the post-termination obligations under the Franchise Agreement, including:
- i. Paying contributions, royalty fees, and advertising due to Salsarita's under the Franchise Agreement;
  - ii. Returning the confidential manual of operating procedures, training aids, and any other materials, and all copies thereof, which have been loaned or provided to SGH by Salsarita's;
  - iii. Turning over to Salsarita's any other manuals, customer lists, rolodexes, records, files, instructions, correspondence and brochures, computer software, computer diskettes, and any and all other information or documents, and all copies thereof, relating to the operation of a Salsarita's restaurant;
  - iv. Canceling all assumed name or equivalent registration by SGH using the name "Salsarita's" and notifying the telephone companies and listing agencies of the termination of SGH's right to use its telephone number in connection with a Salsarita's restaurant;
  - v. Furnishing its business records to Salsarita's pursuant to Section X(C) of the Franchise Agreement to complete an audit; and
  - vi. Taking all steps necessary to assign its Lease Agreement to Salsarita's and complete the sale of assets of the Restaurant

to Salsarita's as required pursuant to Section XVII(K) of  
the Franchise Agreement.

- f. That it have and recover such additional relief as it may be entitled to  
under the facts and applicable law.

This the 22<sup>nd</sup> day of August, 2008.

s/Corby C. Anderson

Corby C. Anderson

N.C. State Bar No. 20829

Richard H. Conner, III

N.C. State Bar No. 28480

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